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1       UNITED STATES DISTRICT COURT  
2       SOUTHERN DISTRICT OF NEW YORK  
2-----x

3       ULKU ROWE,

4                       Plaintiff,

5                       v.

19 CV 08655

6       GOOGLE, LLC,

7                       Defendant.

8                       Conference

8-----x  
9                       New York, N.Y.  
9                       September 21, 2023  
10                      11:00 a.m.

10                     Before:

11                     HON. JENNIFER H. REARDEN,

12                     District Judge

14                     APPEARANCES

15       OUTTEN & GOLDEN, LLP  
16                     Attorneys for Plaintiff  
17       BY: CARA ELIZABETH GREENE  
17                     SHIRA ZAHAVA GELFAND  
17                     GREGORY SCOTT CHIARELLO

18       PAUL HASTINGS, LLP  
19                     Attorneys for Defendant  
19       BY: KENNETH WILLIAM GAGE  
19                     SARA BRADY TOMEZSKO

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THE DEPUTY CLERK: The case of 19-8655, *Rowe v. Google, LLC.*

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Go ahead, Judge.

THE COURT: Good morning. Sorry to keep you waiting.  
I don't like to keep busy lawyers and court reporters waiting.

Why don't you go ahead and make your appearances.

MS. GREENE: Your Honor, Cara Greene from Outten & Golden for the plaintiff. And with me today is Shira Gelfand and Gregory Chiarello from Outten & Golden as well.

THE COURT: Hello.

For Google?

MR. GAGE: Good morning, your Honor. This is Ken Gage. With me is my partner, Sarah Tomezsko, and also on is our client attending today, Mr. Andrew Velazquez from Google.

THE COURT: All right. Welcome all, so to speak.  
Welcome via Teams.

All right. So we're here for a final pretrial conference in this case, which is scheduled for trial on October 4. The case was reassigned to me by Judge Schofield. It was already trial ready by the time it came to me. I have

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1 reviewed the docket, including Judge Schofield's summary  
2 judgment opinion, and I would like to start by outlining what I  
3 understand the basic facts to be, the allegations, based on  
4 what I've seen from what I've reviewed on the docket.

5 In 2016, the CTOs of Google Cloud, William Grannis and  
6 Brian Stevens established the office of the CTO, referred to as  
7 OCTO. Between March 2016 and March 2018, they hired 17  
8 technical directors, a position they felt was commensurate with  
9 either a level 8 or a level 9 on Google's salary scale.  
10 However, according to plaintiff, she was told that all  
11 technical directors would be hired at a level 8. Five  
12 technical directors were hired at a level 9. Plaintiff, who  
13 had significant experience in the financial services industry,  
14 was hired at a level 8. She was the only woman technical  
15 director when she was hired, and she alleges that she had the  
16 same duties as the level 9 technical directors.

17 On June 13, 2018, plaintiff expressed interest in  
18 being the head of the financial services industry vertical, the  
19 FSVL role under Tariq -- is it Shaukat?

20 MR. GAGE: Shaukat.

21 THE COURT: Shaukat. She claimed that she was told by  
22 Grannis, Stevens and Jennifer Burdis, a recruiter, that based  
23 on her experience, she was the obvious person for the role.  
24 Shaukat told plaintiff he would interview her.

25 On June 25, 2018, as part of a larger reorganization,

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1 plaintiff and three other OCTO employees were transferred from  
2 OCTO to report to Shaukat. Their titles were changed to global  
3 client technical lead.

4 After plaintiff started her new role, Shaukat wrote  
5 that she was not, quote, likely right . . . for the FSVL role.  
6 Plaintiff raised concerns with Grannis that she was not being  
7 treated fairly. Plaintiff interviewed for the FSVL role in  
8 August 2018. She was interviewed by four men, and her  
9 interviewers' lack of feedback on the G-Hire platform is the  
10 subject of numerous evidentiary objections.

11 That month, Shaukat determined that plaintiff was not  
12 going to be a finalist for the role. Plaintiff emailed Melissa  
13 Lawrence and Kevin Lucas, two internal recruiters, that she  
14 thought her hiring at a level 8 was negatively impacting her  
15 consideration for the FSVL role.

16 In November 2018, plaintiff emailed Shaukat and Diane  
17 Greene, then CEO of Google Cloud, raising concerns about her  
18 treatment during the interview process, and reiterating her  
19 belief that her under-leveling impacted her candidacy. That  
20 complaint was escalated to HR, which responded that the  
21 leveling process was not discriminatory.

22 The same month, November 2018, Greene announced she  
23 was leaving Google, and Shaukat elected not to proceed with his  
24 preferred candidate for the FSVL role to give him time to  
25 understand the new CEO's plans for Google Cloud. In December

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1 2018, Shaukat told plaintiff that he was pausing the search,  
2 but that she was not a finalist.

3 In January, 2019, Shaukat hired Stuart Breslow, who  
4 had not been interviewed, as the interim head. Stuart  
5 Vardaman, the lead recruiter for the FSVL role, entered  
6 feedback on plaintiff that she was rejected because she lacked  
7 "Googliness," was overly self-oriented, and was not qualified  
8 for the role. During an internal investigation following the  
9 filing of this lawsuit, Vardaman further added that plaintiff  
10 was abrasive, cantankerous, and bristly, despite having  
11 described her months earlier as competent, but not ego-driven,  
12 forthright, with a quick operating cadence, and as someone with  
13 executive poise.

14 In February 2020, after the suit had already been  
15 filed, Kirsten Kliphause, head of North American sales,  
16 informed plaintiff about a new vice president for the financial  
17 services industry lead position. Plaintiff reached out to  
18 Vardaman to apply, and he informed her that she would not be  
19 considered.

20 Does that basically capture what's in dispute here?  
21 Is there anything else I should know?

22 MS. GREENE: Your Honor, for --

23 THE COURT: Go ahead.

24 MS. GREENE: The Court has accurately captured the  
25 allegations here.

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1                   THE COURT: Mr. Gage?

2                   MR. GAGE: Your Honor, I think that fairly  
3 characterizes the allegations, yes.

4                   THE COURT: So there are four claims to be tried, two  
5 under New York's Equal Pay Law, and two under the New York City  
6 Human Rights Law, correct?

7                   MS. GREENE: Yes, your Honor.

8                   THE COURT: All right. Each has a discrimination  
9 claim and a retaliation claim. The discrimination claims  
10 differ, in that under New York state law, plaintiff alleges  
11 that she was paid less on the basis of her sex than men for  
12 equal work, whereas under the New York City law, plaintiff  
13 alleges that she was subject to discriminatory treatment  
14 because of her gender.

15                  Can you flesh out a bit more for me how the two  
16 retaliation claims differ?

17                  MS. GREENE: Yes, your Honor.

18                  THE COURT: In your opinion.

19                  MS. GREENE: The New York Equal Pay Law is a strict  
20 liability statute, and there's no requirement that there be  
21 discriminatory bias or motivation. Rather, the law looks to  
22 whether a man and a woman, or whatever the two protected  
23 category -- whatever the protected category is, are treated  
24 differently in compensation for performing equal work with  
25 respect to responsibilities, so qualifications and skills.

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1                   Once that is established, then the burden shifts to  
2 the defendants to put forward an affirmative defense that is  
3 recognized by the law. And so that's a different structure  
4 than the New York City Human Rights Law, which requires  
5 plaintiff to bear the burden with respect to establishing a  
6 discriminatory or retaliatory modus and the existence of bias.  
7 So that is the biggest distinction between the two. There are  
8 others with respect to the evaluation of comparators, and the  
9 slightly different analysis under the New York Equal Pay Law  
10 than the New York City Human Rights Law. And who is a  
11 comparator for both of those laws differs slightly. So those  
12 are the most material differences between the two.

13                   There are also differences with respect to damages  
14 that are available under the two laws.

15                   THE COURT: What are the differences in damages?

16                   MS. GREENE: Under the New York Equal Pay Law,  
17 there's, first, damages with respect to the difference in  
18 compensation. There, under the New York Labor Law, is a 100  
19 percent liquidated damages provision that is applicable, and --  
20 unless the defendant puts forward certain defenses, and a 300  
21 percent liquidated damages provision where the employee is able  
22 to show that there was willfulness as defined by the law.

23                   So under the New York Equal Pay Law, it's a liquidated  
24 damages scheme. Under the New York City Human Rights Law, in  
25 addition to the economic losses covered by the individuals,

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1 there is compensatory damages and punitive damages, both of  
2 which are unpassed under the New York City Human Rights Law.

3 THE COURT: All right. Mr. Gage, do you have anything  
4 to add or quibble with in terms of what Ms. Greene explained?

5 MR. GAGE: I think that was generally an accurate  
6 description of the differences between the claims, your Honor,  
7 and the differences between the damages. And to the extent  
8 there are any subtle differences, those are kind of flushed out  
9 in our competing charges.

10 I think we agreed on charges for much of this, but  
11 then there are a couple of them where there's a slight  
12 variation. But I think there's a couple where the issues are  
13 crystallized, which is in the jury charges.

14 THE COURT: Well, so far this is going very well. I'm  
15 not sure you actually need me. But let's keep going and see  
16 what happens.

17 All right. I want to turn to some housekeeping  
18 matters. So, first, I notice in the joint pretrial order, you  
19 say that you submitted your proposed demonstratives over the  
20 summer, that we're on top of it. You also say on August 4th,  
21 you submitted objections, that we're not finding, so I'm not  
22 sure what happened to --

23 MS. GREENE: Your Honor, may I speak on that?

24 THE COURT: Yes.

25 MS. GREENE: Yes, your Honor. The parties exchanged

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1 with each other any objections they had with respect to  
2 demonstratives. The nature of the objections that the parties  
3 raised are not any that require your Honor's rulings today.

4 THE COURT: Oh, okay. So where it stands with the  
5 Court is that you -- did you propose them to us or to each  
6 other?

7 MS. GREENE: Your Honor, I believe it was just  
8 exchanged between the parties and not provided to --

9 THE COURT: Okay. So we haven't seen them at all  
10 then. All right. Well, I'll have to take a look at them. It  
11 doesn't need to be now, but it would be good to get those a day  
12 or two in advance.

13 MS. GREENE: Your Honor, absolutely. And if I may,  
14 the nature of the objections that the parties have raised  
15 relate to whether the underlying evidence comes into the  
16 record, and to the extent that it does, there are no objections  
17 to demonstratives.

18 THE COURT: I see. Now I'm being told that we do  
19 actually have your demonstratives.

20 MS. GREENE: Okay.

21 MR. GAGE: Yes, your Honor. You have the  
22 demonstratives, not the objections --

23 THE COURT: Got it.

24 MR. GAGE: -- that were exchanged between us, and I  
25 anticipate the objections will probably be obviated as

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1 Ms. Greene suggests once you've actually ruled on the actual  
2 evidence and the exhibits.

3 THE COURT: I understand. That seems like enough on  
4 that for now.

5 I want to talk to you a little bit about the mechanics  
6 of jury selection. I use the struck panel method, which is  
7 pretty common in this district, as you know. So, in brief, I  
8 will ask questions of the potential jurors, and I will  
9 periodically excuse jurors for cause. I'll incorporate the  
10 questions that I think appropriate in my voir dire, and as I go  
11 through the voir dire, I will ask if you believe there is any  
12 follow-up that I need to do, and then I'll ask any additional  
13 questions. If anyone is not comfortable speaking in front of  
14 the whole group, we'll do it at sidebar or I'll adjourn to the  
15 robing room.

16 I will qualify a panel of 14 prospective jurors, and  
17 then you will each exercise your peremptory challenges, three  
18 per side. You will exercise those challenges simultaneously,  
19 by writing them down on a list. You will exchange those lists,  
20 and present them to me. If there are duplicates on your list,  
21 that is to say each of you strikes the same juror, then so be  
22 it. The jury will be the lowest 8 jurors who remain after the  
23 exercise of peremptory challenges. So if there are no  
24 duplicates, there will be only 8 jurors remaining in the box,  
25 and that will be the jury. If there are duplicates, juror 14

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1 would not be part of the jury, even if that person were not  
2 struck. That is to say, it's the lowest eight numbers that  
3 remain.

4 In that regard, in the civil system, there are no  
5 longer alternates, so, again, there will just be eight jurors,  
6 and we can go down to six. There have to be at least six, but  
7 with eight, in case we lose anyone after several days, we'll  
8 have some wiggle room.

9 Unanimity will be required in light of your statement  
10 to that effect in the joint pretrial order. In terms of  
11 timing, when the jurors first report, they will have to take  
12 care of some preliminary matters, so they likely will not  
13 arrive in the courtroom until around 10:00 or 10:30. I tell  
14 you that because there will likely be some time on Wednesday  
15 morning to take up matters before the jury -- the prospective  
16 jurors come in if we need to.

17 With respect to the schedule, on Wednesday the 4th,  
18 I'd like you to be in the courtroom at 9:00. As I noted a  
19 moment ago, the hope is that the jury pool will be ready around  
20 10:00 or 10:30, and we will continue until 5:00 p.m. that day.  
21 Ideally, we will get through jury selection, as well as  
22 openings. The first day we may even get into the presentation  
23 of evidence that day. So please be ready with your first  
24 witnesses. If not, we'll pick up with that on day two.

25 For every other day of trial, the trial itself will

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1 begin at 9:30 a.m., but I'd like the parties to be in the  
2 courtroom by 9:00 in case there are any pre-testimony issues  
3 that need to be resolved. So just to clarify. We, that is the  
4 parties and myself, will meet from 9:00 to 9:30 each day,  
5 unless there's no reason to do that, but I think we should all  
6 reserve that time for hashing out issues before the jury comes  
7 in. I will then have the witness on the stand starting at 9:30  
8 a.m., with two 20-minute breaks. The first break will take  
9 place 11:00 to 11:20, and the other in the afternoon from  
10 approximately 12:50 to 1:10. We will going until approximately  
11 2:40 p.m. each day.

12 I'm going to provide breakfast in the morning, and  
13 snacks for the later two breaks, so that there is no need for  
14 anyone to leave the courthouse. It just doesn't work well for  
15 people to leave the courthouse for lunch, go out, try to find  
16 food, eat the food, and then have to go back through security  
17 to resume in the afternoon. The length of time that we would  
18 ideally want to carve out for that is not an amount of time  
19 than ends up working well. So that's part of the reason for  
20 the schedule that I'm going to follow.

21 Just a review, the first day of trial, which will be,  
22 you know, jury selection, et cetera, will be a regular 9:00 to  
23 5:00 day, with all other days of trial running from 9:00 to  
24 9:30 for this group, 9:30 to 2:40 p.m. for the jury, and,  
25 again, 9:00 to 2:40 p.m. for counsel.

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1           Please note that if for some reason you find yourself  
2 without witnesses on a given day, then you shall rest. We are  
3 not going to have continuances to wait for someone to show up.  
4 So, you know, please proceed with that in mind. I don't want  
5 to waste your witnesses' time by having them wait around only  
6 for it to turn out that they will not be testifying until the  
7 next day, but, by the same token, I don't want to send the jury  
8 home at 1:00 p.m. or whatever time it is because we don't have  
9 any more witnesses for the day.

10           The Joint Pretrial Order outlines a host of objections  
11 to designations and exhibits. We will address those later in  
12 the mornings, at lunch, or at the end of the day as they become  
13 relevant. I would like to have as few side bars as possible,  
14 but by the same token, I want to wait to see how the evidence  
15 is unfolding before I make rulings on much of what you have put  
16 forward at this point. If you can anticipate issues in advance  
17 of them arising during trial, it would be much better for  
18 everybody, you guys, me, and the jury, to raise them before we  
19 start the trial day, or at the end of the trial day, or in  
20 advance of trial starting. I'm just going to rely on you to  
21 make sure that the issues that need to be resolved and teed up  
22 are, in fact, teed up, so we have as few surprises as possible.

23           Regarding using depositions, I expect that you will  
24 have copies for me the day of trial, when deposition testimony  
25 is likely to arise, so that if there are any objections with

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1 respect to the usage of the deposition transcript or  
2 introduction of prior testimony, I can review at the  
3 appropriate time. I know that corrected deposition transcripts  
4 have been sent in, and so you'll just bring them on the  
5 appropriate day. We were starting to try to keep up with the  
6 corrections that are coming in, and it's really difficult for  
7 us to do this, because of the volume of what has been provided  
8 in hard copy, which I know we asked for, but it's an enormous  
9 volume, and to try to figure out where to slot in corrected and  
10 whatever, it's just too hard. I certainly don't want people  
11 resubmitting everything just so that we can have a few  
12 deposition transcripts in their most current version, but I'll  
13 get them the day that they're going to come up.

14 Exhibits, I wanted to note that you'll be required to  
15 premark the exhibits, so label them in advance of the trial so  
16 that you're not fumbling through exhibit stickers in front of  
17 the jury and wasting time that way. Just be prepared and have  
18 them ready to go.

19 To the extent that you're planning to use the  
20 electronic system in the courtroom, which I believe you are,  
21 that tends to work well. You can show whatever you have to the  
22 witness on the witness screen and counsel screen, and then if  
23 the -- whatever it is is admitted, and you request permission  
24 to publish it to the jury, then my deputy and I can show it on  
25 the jurors' screens as well. I would recommend that you have

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1 hard copies of anything as a backup plan, because there's  
2 always the risk that the electronic system fails. So it's good  
3 to have a plan B.

4 In terms of laying a foundation for exhibits, and  
5 specifically for those where there has been no objection,  
6 unless there is actually a stipulation, pursuant to which they  
7 would be admitted, this is always helpful. In that case, you  
8 would write the stipulation down and mark it as an exhibit.  
9 Then you can offer other exhibits pursuant to it, saying that  
10 they qualify as business records or what have you. So I'd like  
11 to do as much of that by stipulation as possible.

12 Objections to questions, I don't want to have speaking  
13 objections in front of the jury, so what I'd like to do is have  
14 you say objection, and a single word or two to identify the  
15 basis for your objection, foundation, relevance, hearsay, et  
16 cetera. If I feel a need to have a sidebar, I will, but that's  
17 not going to be generally the practice in this trial. So,  
18 again, please raise things in advance each day if you see  
19 issues coming.

20 Witnesses, I don't want witnesses to be called twice,  
21 so to the extent there is overlap between the parties'  
22 respective lists, and I do think there are ten overlapping  
23 witnesses between your lists, I will allow the defendant on  
24 cross to go beyond the scope of the direct, as, obviously, they  
25 would be permitted to do that on their own direct, given that I

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1 think we can proceed much more efficiently, and it will be  
2 better for everybody. So if there's any issues with that,  
3 hopefully you can talk to each other and work that out.

4 Now, that is a segue into the next issue I wanted to  
5 address today, and that is timing. You've identified 29  
6 witnesses in total, and you're asking, for plaintiff, around 20  
7 hours, and defendant around 25 hours. I know that you have --  
8 both of you have may call lists, and between the two of them,  
9 though, that testimony only amounts to a couple of hours. So  
10 it's a very tiny percentage of what you are looking for  
11 overall.

12 There seems to me to be ten or so key people who have  
13 been involved in the decision-making at issue. To me, 29 and  
14 45 hours seems excessive in a single plaintiff, single  
15 defendant case, so I want to hear you out today on who you  
16 consider to be the key witnesses, and how much time you think  
17 they need. Also, I want you to tell me if, apart from what's  
18 listed in the joint pretrial order -- whom you actually plan to  
19 call. I want to hear you out on all of that today, but I think  
20 this list is going to need to be pared down. What I will do  
21 is, in the end, I will establish an amount of time that we're  
22 going to use, and I'll let you figure out for yourselves how  
23 you want to use that time.

24 So, Ms. Greene, do you want to start talking about  
25 your key people, and also whether you actually intend to call

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1 everybody on your "will call" list?

2 MS. GREENE: Thank you, your Honor.

3 In terms of our key witnesses, we have Ms. Rowe,  
4 obviously, the plaintiff; we have her comparators, Nick  
5 Harteau, Ben Wilson, and Evren Eryurek. Wilson and Eryurek are  
6 both deponent testimony, deposition testimony, so they won't be  
7 appearing live. We have Will Grannis and Tariq Shaukat. We  
8 have Mr. Breslow, Mr. Vardaman, and Ms. Lawrence. We have,  
9 your Honor, worked together as the parties to schedule a  
10 potential witness order, and to make sure that we are  
11 efficiently using our time.

12 I'll say that when we did that, I don't know that we  
13 took into account an ending time of 2:40 each day. Our time  
14 estimates, we've estimated the time for a witness using --  
15 considering both plaintiff's time and defendant's time. With  
16 Ms. Rowe, we would anticipate, if she began on the 4th, that  
17 her testimony would end on the 5th. Mr. Harteau would follow  
18 her, and that is -- his testimony is quite brief.

19 THE COURT: Mr. Harteau, what's his role?

20 MS. GREENE: Mr. Harteau is a comparator for purposes  
21 of the New York Equal Pay Law, as well as the New York City  
22 Human Rights Law. He offered a --

23 THE COURT: Okay.

24 MS. GREENE: -- declaration in support of summary  
25 judgment. His testimony we estimate to be brief, approximately

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1 30 minutes, if not less.

2 Ashley Tessier --

3 THE COURT: Okay.

4 MS. GREENE: I'm sorry, your Honor.

5 THE COURT: No. Go ahead.

6 MS. GREENE: On Friday the 6th, we would expect to  
7 call Ms. Tessier, who's being offered for the limited purposes  
8 of establishing a hearsay exception to the investigative notes.  
9 We have asked for a stipulation. At most, we expect her  
10 testimony to last approximately 15 to 30 minutes.

11 Jenny Burdis, who was the recruiter for the technical  
12 directors and OCTO, her testimony is by deposition.

13 Ms. Spokane, who did the ER investigation; and Brian Stevens,  
14 who was the chief technology officer, head of OCTO, would also  
15 appear on Friday. And, again, we estimate approximately an  
16 hour total time for Ms. Spokane, and approximately 30 to 45  
17 minutes for Mr. Stevens.

18 On the 10th, we would call Will Grannis, Melissa  
19 Lawrence, and Ben Wilson by deposition. Mr. Grannis' testimony  
20 I think we anticipate in total being somewhere in the three to  
21 four-hour range for both parties. That's our estimate.

22 Ms. Lawrence I think we estimate to be in the hour to hour and  
23 a half range. Mr. Wilson, I don't know that we've timed how  
24 long the parties' designations will be in total.

25 The 11th, we anticipate calling Tariq Shaukat; Kevin

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1 Lucas, who is being offered for a limited purpose; and Evren  
2 Eryurek. Mr. Shaukat's testimony will be somewhere in the two-  
3 to three-hour range. Kevin Lucas, less than an hour, and Mr.  
4 Eryurek is a brief witness as well.

5 On Thursday the 12th, we anticipate calling Stuart  
6 Breslow, who, from your Honor's recounting of the facts, was a  
7 comparator under Tariq Shaukat, and also was given the head of  
8 financial services role. Stuart Vardaman, the recruiter for  
9 purposes of the head of financial services role and the VP  
10 sales role, the retaliation claim, is appearing by deposition.

11 And then on the 12th, we anticipate also calling  
12 Ostrofe, our expert. And on the 12th is when plaintiff  
13 anticipates resting her case.

14 THE COURT: All right. Is that everything that you  
15 put in your joint pretrial order for the plaintiff's side?

16 MS. GREENE: Your Honor, it depends on which version  
17 of the joint pretrial order you're looking at. The last  
18 version I think is very consistent with that.

19 THE COURT: It is the second, second amended.

20 MS. GREENE: Correct, your Honor. Yes, your Honor.

21 We have some "may call" witnesses. It's dependent on  
22 whether underlying exhibits are stipulated to or not. For  
23 instance, we've identified Mr. Kurian. He is being called for  
24 a very limited purpose, which is to establish corporate  
25 knowledge of Ms. Rowe's complaints. If it's possible, the

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1 parties may be able to stipulate to that knowledge, in which  
2 case we would not need to call him as a witness.

3 Diane Greene is dependent on, again, certain testimony  
4 that may or may not come in.

5 THE COURT: All right. So, in other words, what  
6 you've just run through is about 20 hours.

7 MS. GREENE: Yes, your Honor. Approximately.

8 THE COURT: I think that's too much. I think that's  
9 too much. Why can you not do this as -- it's a single  
10 plaintiff case. I understand there are different scenarios  
11 here, but why can you not do that in ten hours?

12 MS. GREENE: Because these claims -- first of all,  
13 there's multiple claims, standing mirrors, and so, you know,  
14 there's key testimony with respect to comparators with respect  
15 to what we refer to as the bad actors, the recruiters, and the  
16 ER and HR investigators. So, you know, we have tried to keep  
17 this as focused as possible, and have eliminated any extraneous  
18 witnesses, especially when there's documents that could replace  
19 that deposition -- examination testimony, but, you know, for  
20 purposes of the burden that we bear, on all four of the claims,  
21 this is the evidence that's necessary to meet our burden.

22 And, your Honor, just to be clear, our estimates of  
23 time include, again, both direct and cross-examination, and  
24 defendant's examination exceeds cross-examination.

25 THE COURT: All right. So that time, 20 hours,

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1 doesn't even include your openings?

2 MS. GREENE: No, your Honor. We would estimate  
3 openings to be less than 30 minutes for plaintiff. I don't  
4 know how long defendant would intend to give for the opening,  
5 but we believe in opening in the 15- to 30-minute range is  
6 sufficient for the claims here.

7 THE COURT: All right. Mr. Gage, let me segue to you.  
8 You're asking for 25 hours. Why can't you do this in ten to --  
9 ten hours.

10 MR. GAGE: Well, your Honor, I will play Name that  
11 Tune. We can do it in a lot less than the original prediction.  
12 Indeed, over the last few weeks, opposing counsel and we  
13 collaborated on an order, and agreed -- I thought agreed on an  
14 order which was almost exactly as Ms. Greene described. She's  
15 listed a couple of them in terms of order. In addition to the  
16 witnesses she's just described, we would have five witnesses in  
17 our case, each of whom is very brief, none of whom would be  
18 more than one hour. And so beyond the testimony that  
19 Ms. Greene just described, beyond those witnesses and our  
20 examination of them, I would anticipate we would have, you  
21 know, five, six hours of a defense case.

22 And I would just reiterate, in terms of what  
23 Ms. Greene said earlier, we had spent a fair amount of time  
24 trying to agree on the order, so we knew who needed to be  
25 where, when, because many witnesses, some are no longer

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1 employed by the company, many are coming from out of town, so  
2 we've been coordinating travel arrangements. We did not  
3 anticipate ending at 2:40, and so I -- and I don't know what  
4 Ms. Greene thinks about this, but I think, given that we're not  
5 going past 2:40 on any given day, except the first day, I  
6 suspect that some of those days might have to shift.

7 THE COURT: All right. I just lost the camera. One  
8 second.

9 MR. GAGE: And one other thing, and I think Ms. Greene  
10 will try her case however she sees fit, and your Honor allows,  
11 but we do have a few witnesses whose testimony is presented by  
12 deposition, which I think allows us some flexibility to move  
13 around if the schedule shifts a little bit and a witness is  
14 flying in, but we have, you know, testimony to be presented by  
15 a deposition.

16 THE COURT: All right. So what you've just told me,  
17 is that different in any way from what you've laid out in the  
18 joint pretrial order?

19 MR. GAGE: It's much shorter. It's much shorter.

20 THE COURT: Okay. So instead of 25 hours, you just  
21 said 5 to 6 hours of defense case, right?

22 MR. GAGE: Exactly, your Honor. But that does -- the  
23 five to six hours does not count the time for us to examine the  
24 witnesses that Ms. Greene is calling. The days that she laid  
25 out are consistent with the days that we had agreed would be

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1 necessary for the witnesses she described. Is that --  
2 hopefully, that answers your question.

3 THE COURT: I think so. I'm trying to get to a total  
4 -- so five to six hours, not including the time that you need  
5 to examine the plaintiff's witnesses. Where do you think you  
6 end up in terms of total hours?

7 MR. GAGE: I haven't calculated that, your Honor.  
8 Maybe 15 to 20, your Honor? I hadn't thought about it that  
9 way, because we had agreed on the order and the amount of days  
10 it would take.

11 THE COURT: All right. Fifteen to 20, that brings us  
12 down to as many as 40 still. I'm going to give thought to what  
13 you've said today. Does anyone want to say anything else about  
14 the number of hours, the need for the hours, and the prejudice  
15 you believe you would experience if they were shorter? Because  
16 I do think that even 40 hours for a -- this is a single  
17 plaintiff, single defendant case. That is a lot of court time  
18 in a case like this. So I want to hear you now.

19 I'm not going to decide this is at the moment. I'll  
20 get back to you about the amount of time. But anything else  
21 anyone wants to say to me, please tell me now about timing.

22 MS. GREENE: Your Honor, in my experience, and this is  
23 my -- my experience, trial -- between arbitration and jury  
24 trials, 7 days tends to be the average for a single plaintiff  
25 case in trial, and that is, you know, using the time as

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1 efficiently as possible. So experience suggests that 7 hours  
2 -- or 7 days is a timeframe that is manageable and does not  
3 include unnecessary and inefficient testimony.

4 So we also take into account that I believe the Court  
5 is closed on Monday the 9th for Columbus and Indigenous Persons  
6 Day. If that's not the case, we'd like to know. But with our  
7 parties working cooperatively to set a realistic schedule, I  
8 think places us finishing the case around the 16th or 17th of  
9 October. I think there is -- I can speak for plaintiff. I  
10 know we've discussed it some with defendant, some value in  
11 doing the cost method, where both sides have, you know, a  
12 specific amount of time for their case, and to use as they  
13 need. I think that encourages the parties to be efficient.  
14 And I would certainly rather schedule more time, and be able to  
15 dismiss the jury early than to find that we would be prejudiced  
16 by not being able to call certain witnesses and exceed the time  
17 that we indicated to the jury would be the time of service in  
18 this case.

19 THE COURT: All right. Well, in terms of keeping  
20 track -- go ahead, Mr. Gage.

21 MR. GAGE: I would agree with Ms. Greene that the  
22 number of days, the days that Ms. Greene laid out, is  
23 consistent with single plaintiff cases that I've tried over the  
24 last 30 years in terms of the amount of time. And I think we  
25 have, particularly compared to our original estimates and our

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1 original lists of witnesses, we have worked cooperatively to  
2 make this an efficient presentation, cut down the number of  
3 witnesses, and get them scheduled on days so that we can make a  
4 presentation to the jury that's sufficient.

5 THE COURT: All right. In terms of the mechanics of  
6 keeping track of time, unless you'd like to agree on someone  
7 else to keep track of the time, I'll keep the clock, and I will  
8 -- I don't know about a chess clock, but I will give you a  
9 sense at the end of each day how much -- each trial day how  
10 much time you have left.

11 MR. GAGE: And if I could ask, your Honor, does that  
12 mean each side?

13 THE COURT: Yes.

14 MR. GAGE: Give each an amount we have left?

15 THE COURT: Yes. I do want to ask a more specific  
16 question about potential issue of cumulativeness. It seems  
17 that there -- and, again, the description's kind of high level,  
18 but there are numerous witnesses that -- who are on the list to  
19 describe the hiring level and job responsibilities of technical  
20 directors in OCTO. How are they not cumulative, those  
21 witnesses?

22 MS. GREENE: Your Honor, with respect to the  
23 comparators, they're not cumulative, because, you know, as to  
24 whether any one individual is a comparator for purposes of  
25 either the New York Equal Pay Law or the New York City Human

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1 Rights Law, will be dependent on the specific performance of  
2 duties for that comparator. That being said, those witnesses I  
3 think are very brief in terms of their own description of their  
4 own job duties.

5 Beyond that, there is evidence that relates to the  
6 leveling decisions, and that relates most to plaintiff's case,  
7 establishing the comparability of the work that's being  
8 performed, and Ms. Rowe's skills, judged against the leveling  
9 mechanism. But, also, that goes to plaintiff's ability to  
10 defeat any affirmative defenses as to non-discriminatory  
11 reasons that defendant may assert are the reasons for their  
12 leveling decisions, so those witnesses that have been  
13 identified for those purposes, the parties still intend to  
14 call. The testimony is unique, and is not duplicative.

15 THE COURT: All right. Mr. Gage, do you have anything  
16 to say about that?

17 MR. GAGE: Sure, your Honor.

18 Each of the witnesses that Google intends to call,  
19 either in our own case or to examine during plaintiff's case,  
20 offers something unique, and to the extent that in our joint  
21 pretrial order, we do mention some subjects that overlap, we  
22 absolutely do not intend to beat any dead horses. And as the  
23 testimony comes in, when a second witness comes in, we're going  
24 to offer that witness' unique testimony, and we do not intend  
25 to plow ground previously plowed. But when we did the list and

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1 we identified the subjects, we did not know what the order was  
2 going to be, and so in order to accurately inform the Court of  
3 a general description of what these folks had to say, it  
4 appears there's some duplication. But rest assured, I do not  
5 want to present repetitive testimony in front of a jury.

6 THE COURT: I'm sure that's true. Now, I'm going to  
7 think a little bit more. In listening to you now, I'm going to  
8 think a little bit more. Don't have people change flights and  
9 whatever yet, because I'm going to think a little more about  
10 the trial day. I do want to have it structured so people don't  
11 have to go out of the courthouse for lunch, because that just  
12 ends up, as I mentioned, resulting in a lot of problems with  
13 people coming in late, and they can't help it. They're stuck  
14 at security and whatnot. But I'm going to give that a little  
15 more thought.

16 Let's talk about Thomas Kurian. It looks like the  
17 plaintiff wants him to talk about P-83, which is an e-mail  
18 thread sending articles reporting about the filing of this  
19 lawsuit, and Google objects under Rules 401 and 403. The  
20 emails seem at least arguably relevant since part of  
21 plaintiff's retaliation claim is that she was not interviewed  
22 for the vice president, financial services industry lead  
23 position after filing this suit. But I'd like to hear from  
24 both of you now on him.

25 MR. GAGE: Sure. I'll go first, your Honor, in the

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1 face of silence from Ms. Greene.

2 Mr. Kurian had absolutely nothing to do with any of  
3 the decisions at issue in this case. Mr. Kurian is the CEO of  
4 Google Cloud. He joined the company after much of the events  
5 in this -- at issue in this case occurred. He was not involved  
6 in any decisions. And the fact -- and all that email shows is  
7 that somebody told him that there was a press article about the  
8 lawsuit that Ms. Rowe filed, and so he, as a witness, has  
9 absolutely nothing relevant to say for the jury.

10 And the exhibit itself, I mean, the parties can  
11 stipulate to the fact that Ms. Rowe filed a lawsuit in I think  
12 it was August of 2019, or whenever it was. That's a matter of  
13 record. But there's absolutely no reason for Mr. Kurian, plus,  
14 he's in California. He hasn't been subpoenaed. He has nothing  
15 relevant to say. And the exhibit itself is not relevant to the  
16 case.

17 THE COURT: All right. Ms. Greene.

18 MS. GREENE: Your Honor, if I may, yes, my colleague,  
19 Ms. Gelfand, who was admitted in 2019, is prepared to argue  
20 this issue if it's acceptable to your Honor.

21 THE COURT: I'd be pleased to hear from Ms. Gelfand.  
22 Go ahead.

23 MS. GELFAND: Thank you, your Honor.

24 While Mr. Kurian was not a decision-maker with respect  
25 to Ms. Rowe's claims, this -- you know, this document

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1 demonstrates he was knowledgeable about her complaints, he  
2 sought a conversation about it, and this is directly relevant  
3 to the issue of the jury determining liquidated damages under  
4 the Equal Pay Law and punitive narcotics damages under New York  
5 City's Human Rights Law.

6 This document demonstrates corporate knowledge at the  
7 highest level, and that Mr. Kurian was knowledgeable about it,  
8 spoke about it. And, you know, Google did not remedy  
9 Ms. Rowe's complaints.

10 We also note that we have offered a stipulation to  
11 defendant to note Mr. Kurian's knowledge as to Ms. Rowe's  
12 complaint, and the complaint filed, and defendant declined that  
13 stipulation. And that's why we have offered him as a witness  
14 to testify as to this document.

15 THE COURT: All right. Diane Greene. So the  
16 plaintiff wants Ms. Greene to testify about P-147, which is a  
17 declaration Ms. Greene wrote in this case as part of an  
18 application for protective order preventing the taking of her  
19 deposition. Defendant objects to P-147 on hearsay grounds, and  
20 to the witness under Rules 401 and 403.

21 Let's start with P-147. Isn't this hearsay? The most  
22 relevant exception is 804(b)(1)(A), for testimony that was  
23 given as a witness at a trial, hearing, or lawful deposition,  
24 which this was not. Regarding the residual exception,  
25 Ms. Greene's affidavit says, in effect, that she doesn't

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1 remember any of this, so to the extent her declaration is  
2 probative of anything, how are statements in her declaration  
3 more probative on the point for which it is offered than  
4 Shaukat's testimony?

5 MS. GREENE: Your Honor, the declaration would be  
6 offered not with respect to Mr. Shaukat and the hiring process  
7 for the financial services head. Rather, it would be offered  
8 with respect to the initial leveling and hiring decision.

9 Mr. Grannis testified at his deposition, as did  
10 Ms. Burdis, as to who the decision-maker was, and points to  
11 Ms. Greene. The fact that Ms. Greene in her declaration has  
12 asserted that she does not recall nor does she believe that she  
13 was part of that decision making, undermines that assertion of  
14 Mr. Grannis and Ms. Burdis, and that's relevant with respect to  
15 the affirmative defenses.

16 The defendant is required to show what the decision  
17 was at -- you know, why the decision was what it was at the  
18 time the decision was made. In this case, they can't say who  
19 even was the decision-maker. There's disagreement amongst the  
20 parties as to who the decision-maker was. They're not able to  
21 meet that defense. It is only intended to be offered if that  
22 becomes relevant.

23 So it's more in the nature of rebuttal evidence than  
24 direct evidence, and so we put it on the list and put her as a  
25 witness out of an abundance of caution, so that Google would be

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1 on notice of our intent. But, again, it's really intended and  
2 would be used as rebuttal evidence.

3 THE COURT: All right. Mr. Gage, anything else from  
4 you on this?

5 MS. TOMEZSKO: I would like to speak on that, your  
6 Honor.

7 THE COURT: I'm sorry. Just so that I can refer to  
8 you by name, you are Ms. Tomezsko

9 MS. TOMEZSKO: Tomezsko, yes. Exactly.

10 THE COURT: Okay. Go ahead.

11 MS. TOMEZSKO: If you look at the testimony that  
12 plaintiff herself has identified in this case as relevant  
13 testimony from Ms. Burdis as to who made the decision, the  
14 ultimate approval of the recommended level that Will Grannis  
15 recommended with the input of others, that testimony shows that  
16 Diane Greene -- and if you're able to access the deposition  
17 testimony, it's on page 53 to 54 of Jennifer Burdis'  
18 deposition. It's clear from her testimony that the final  
19 decision was made by two SVPs within the organization, senior  
20 vice presidents, if you will.

21 Diane Greene had access to all those packets, but so  
22 did Irv Holvil and Sridhar Rajishami. And if you look at the  
23 testimony, the question is, so who made the final decision with  
24 respect to Ms. Rowe's level. The answer is the SVPs I just  
25 listed. She had previously listed, Irv, Mr. Holvil, and

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1 Mr. Rajishami, and said Diane Greene had access to the packet.

2 So I don't believe it's correct that Ms. Burdis  
3 testified that Ms. Greene was the final decision-maker. I  
4 think you could look at her testimony and determine that.

5 THE COURT: All right. Thank you.

6 I want to talk now about Patricia Florissi, if that's  
7 the way you say it. Plaintiff objects to Ms. Flurisy  
8 testifying under Rules 401 and 403, and because she was not  
9 identified at any point in discovery allegedly, and was only  
10 identified in the last month. Part of plaintiff's case is that  
11 she has been paid at level 8, but has been doing work  
12 equivalent to level 9.

13 Is there anyone else already testifying to plaintiff's  
14 work since the spring of 2022?

15 MR. GAGE: No, your Honor. Ms. Flurisy has been  
16 Ms. Rowe's manager since the spring of 2022. Ms. Rowe is  
17 seeking, as you said, to recover back pay up to the date of  
18 trial, and she's arguing that she's performing level 9 work.  
19 And because this case has lasted for a long time, time has  
20 passed, things change. Mr. Grannis managed Ms. Rowe up until  
21 that point, and so there's nothing -- there is no surprise  
22 here. Ms. Flurisy will testify as to the work that Ms. Rowe  
23 has done and hasn't done, and it will be very brief. It's not  
24 cumulative, and I think we're -- we should be entitled to  
25 present them.

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1                   THE COURT: Why didn't you disclose her earlier?

2                   MR. GAGE: She's been known to the plaintiff for a  
3 long time, your Honor, and I believe we did identify her quite  
4 some time ago. And, again, Ms. Rowe has known since the spring  
5 of 2022 that she was working for Ms. Flurisy, so there's no --  
6 there's no surprise. There's no prejudice here. And,  
7 presumably, Ms. Rowe is going to take the witness stand and  
8 talk about all of the things that she claims to be doing. We  
9 should be entitled to have Ms. Flurisy come in and offer  
10 Google's version of what's been -- what she's been doing and  
11 not doing relative to level 8 versus level 9.

12                  THE COURT: All right. Ms. Gelfand, if you're taking  
13 this one, or back to Ms. Greene.

14                  MS. GREENE: It will have to be me, your Honor.

15                  There's multiple points here. One is that Ms. Rowe,  
16 plaintiff, was not on notice that defendant considered her to  
17 be a witness or have relevant testimony in this matter. And  
18 Google has not supplemented their discovery at any point in  
19 time to include information that relates to Ms. Flurisy.  
20 Further, the allegation is that the leveling decision at the  
21 time that it was made, and the compensation decision at the  
22 time it was made give rise to the Equal Pay Law claims, and the  
23 New York City Human Rights Law claims.

24                  There is case law that I would direct your Honor to,  
25 including *Rifkinson v. CBS*, and that case cite is *Crawford v.*

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1       *Western Electric Company*, and I can certainly provide your  
2 Honor with those citations separately, but it says, because an  
3 employer's intent is measured at the time it makes the  
4 challenged employment decision, post-decision performance of  
5 either the plaintiff or the more favorably treated employee is  
6 generally not relevant. *Crawford v. Western Electric Company*  
7 said, plaintiff's performance after adverse employment action  
8 is not probative of legitimate non-discriminatory basis for the  
9 action.

10           Here, again, the role has changed and shifted over  
11 time. The real measurement of whether claims exist under the  
12 New York Equal Pay Law or the New York City Human Rights Law is  
13 whether, at the time the decisions were made, and at the time  
14 that work was being performed, Ms. Rowe was performing work  
15 that was equal to Mr. Harteau and Mr. Breslow's. And so  
16 together with the relevance, as well as the lack of defendant  
17 providing any notice or discovery or supplemental discovery as  
18 to Ms. Flurisy, plaintiff objects.

19           MR. GAGE: Your Honor, may I respond?

20           THE COURT: Yes.

21           MR. GAGE: Again, there was ample notice that  
22 plaintiff knew that she had been managed by Ms. Florissi for  
23 quite some time. Also, Defendant's Exhibit 98, which has long  
24 been on the various iterations of defendant's exhibit list,  
25 makes clear that Ms. Flurisy was in this role. So there's no

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1 prejudice.

2 As to the arguments that counsel made about the law, I  
3 just want to address those very specifically. The New York  
4 Labor Law is being referred to as New York City's Equal Pay  
5 Statute, does not govern leveling decisions. It governs pay  
6 decisions. And the evidence will show, as you will see during  
7 the course of the trial, that all of the L-8 and L-9 technical  
8 directors hired in OCTO, Ms. Rowe's hiring package or  
9 compensation package was the second highest.

10 And Ms. Rowe is claiming under the New York Labor Law  
11 that she is doing equal work, equal work to people who are  
12 level 9, and that she should be paid the same as people who are  
13 level 9, and she is seeking back pay up to the present. And so  
14 she needs to prove that she is doing equal work with people who  
15 are paid more than her. And Ms. Flurisy is going to describe,  
16 if she testifies, she will describe the nature of the work that  
17 Ms. Rowe is doing, and how it differs from work that is  
18 performed by people who are level 9 employees. And that is a  
19 core part of Google's defense throughout this entire period of  
20 time to their claim that she was paid inconsistent with the  
21 law, and that she should have been paid what level nines were  
22 paid.

23 And Ms. Flurisy also had input into comp decisions  
24 that are at issue in this case, which will be before the jury.  
25 She offered performance reviews, which the jury will hear

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1 about. And this is a key part of Google's defense. Ms. Rowe  
2 can't claim that, oh, I was misleveled at the time, you know,  
3 six years ago, and that since then the jury should just assume  
4 that she's doing equal work to people who are paid more. And  
5 they've had all that discovery, the performance reviews.

6 MS. GREENE: Your Honor, if I could?

7 THE COURT: Yes.

8 MS. GREENE: If I may briefly address, we have not had  
9 full discovery. And if this were such a key aspect of  
10 defendant's case, we would expect him to fully supplement the  
11 record, at a minimum offer Ms. Florissi for a deposition if  
12 she's a key witness and became a key witness outside of the  
13 discovery period. And that is why parties have an obligation  
14 to update their initial disclosures, and, certainly, even in a  
15 formal way, put the other side on notice. And so without  
16 having full discovery, without having the benefit of all of the  
17 compensation, related documents for the past year, not just the  
18 outcomes, the underlying decision-making process, plaintiff is  
19 severely prejudiced at offering assistance.

20 THE COURT: All right. Well, have you asked for that  
21 additional discovery? Have you asked to take her deposition?

22 MR. GAGE: They have not asked to take the deposition,  
23 your Honor. And they asked us to supplement compensation  
24 information for the most recent comp cycle, which was the end  
25 of '22, into '23. We did supplement all of that information,

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1 not just for Ms. Rowe, but for the alleged comparators, so we  
2 have supplemented the discovery they asked for. And they have  
3 not asked for Ms. Florissi's deposition.

4 THE COURT: All right. So, Mr. Gage, we have a couple  
5 weeks remaining now until trial starts. Are you willing to  
6 present Ms. Flurisy for a deposition?

7 MR. GAGE: I don't know what her availability is and  
8 opposing counsel's availability is for that deposition, but we  
9 certainly would be willing to work with them for some time  
10 limited deposition, if that's what your Honor is telling us we  
11 need to do.

12 THE COURT: Well, I think to the extent that that  
13 could resolve the issue here, then I think it should be done.  
14 It's not that uncommon to, you know, when someone is being  
15 disputed at this late point, there's really a lot of time still  
16 before trial, so I would like the two sides to confer further  
17 about Flurisy, and figure out whether a deposition -- it seems  
18 to me, if her deposition is taken, that should cure the  
19 objection. It seems to me -- what day is this? It's Thursday.  
20 Send me a joint letter by the close of business tomorrow, and  
21 update me on your discussions about Ms. Flurisy, and whether  
22 your positions as to her have evolved at all at that point, and  
23 also whether she is available to be deposed over the next I  
24 guess week and a half, and what the plaintiff's decision is on  
25 that.

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1                   But, to me, it seems like that could be a solution as  
2 to this witness.

3                   MS. GREENE: Thank you, your Honor. We'll do so.

4                   THE COURT: All right. I just have a couple of  
5 additional matters for today. One is, if you told me when the  
6 third amended pretrial order is coming, I lost track of what  
7 you said. When do you propose to submit that?

8                   MS. TOMEZSKO: Your Honor, we have --

9                   MS. GREENE: Your Honor, there --

10                  MS. TOMEZSKO: Oh, I'm sorry. We sent it to  
11 plaintiff's counsel this morning, with a redline I believe,  
12 and, if not, we could supplement with a redline. We have it  
13 waiting for their sign off. Understandably, we've all been  
14 preparing to be here, so they haven't seen it yet. I don't  
15 fault that, but as soon as we have that sign off, we can get  
16 that on file. It's a very minor change.

17                  THE COURT: Okay. So the corrections that chambers  
18 have been alerted to in the past I think it's like 24 hours,  
19 one category was corrected deposition transcripts, and then I  
20 thought there was a second categorially which is deposition  
21 designations; is that right? Is that what has given rise to  
22 the need for the third amended joint pretrial order?

23                  MS. TOMEZSKO: Yes. What's given rise to the need for  
24 the third amended joint pretrial order is the inadvertent  
25 omission of some objections to Ms. Burdis' deposition

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1 transcript. These are objections we had asserted earlier, but  
2 we apologize for the inadvertent omission in this round, or the  
3 last round. And so it corrects for that.

4 THE COURT: That is fine. Thank you.

5 Now, I notice there are other lawyers on the docket,  
6 but I am assuming insofar as any other lawyers did not attend  
7 today's conference, you're going to be the lawyers trying this  
8 case, correct?

9 MR. GAGE: That's correct, yes.

10 MS. TOMEZSKO: Yes, your Honor.

11 THE COURT: All right. A word about transcripts.  
12 Now, have you thought about whether you plan to order the daily  
13 transcripts?

14 MS. GREENE: We are, your Honor.

15 THE COURT: Okay. I was going to recommend that in  
16 case the jury asks for a note for all evidence bearing on a  
17 particular topic.

18 Finally, today's transcript, if you would please order  
19 it and split the cost, and, with apologies to our court  
20 reporter, I would like that to be available on an expedited  
21 basis.

22 All right. Is there anything else either side would  
23 like to raise today?

24 MS. GREENE: If I may, and I appreciate the Court's  
25 busy schedule, but with respect to the jury charge --

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1                   THE COURT: Yes.

2                   MS. GREENE: -- when might we expect to know the final  
3                   jury charge?

4                   THE COURT: Sitting here at the moment, I don't know,  
5                   but I will consider that and let you know.

6                   MS. GREENE: Okay. I assume the same is true then,  
7                   your Honor, with respect to the jury verdict form?

8                   THE COURT: Yes, that is correct.

9                   MS. GREENE: Your Honor, just a few small notes then.  
10                  Will the courtroom be available on October 3rd for a technology  
11                  run through, so that we can iron out any kinks ahead of time  
12                  before the jury is there?

13                  THE COURT: I thought there was already a technology  
14                  run through, or was that --

15                  MS. GREENE: Your Honor, we met with the technician  
16                  and your Honor's courtroom deputy, and familiarized ourselves  
17                  with it. We've not yet had a chance to actually hook up our  
18                  computers and monitors and make sure we're able to publish  
19                  electronic documents to the jury. And I think both sides would  
20                  like the opportunity to do so. Again, just to make sure that  
21                  prior to the jury being seated and the presentation of  
22                  evidence, we've worked out any technological issues.

23                  THE COURT: Well, I'm certainly in favor of that. Let  
24                  me just look at the calendar one second.

25                  Yes, that should be fine.

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1                   MR. GAGE: One logistical question, your Honor. Would  
2 we be able to leave things in the courtroom each night or will  
3 we need to vacate the premises of all of our -- we brought in  
4 every day.

5                   THE COURT: Oh, no. You can leave -- I used to do  
6 what you do. I understand these problems.

7                   MR. GAGE: I know you do.

8                   THE COURT: You can leave things in the courtroom. It  
9 will be locked, and it should be fine. So --

10                  MR. GAGE: Okay.

11                  THE COURT: All right. Ms. Greene anything else? It  
12 sounded like you had a bit of a list, or have we exhausted it?

13                  MS. GREENE: Your Honor, I think everything else can  
14 wait until the trial is -- your Honor has indicated she prefers  
15 to handle it on a daily basis.

16                  THE COURT: All right. Then I'll look forward to  
17 hearing from you tomorrow evening, and getting the third  
18 amended joint pretrial order, and anything else you might need  
19 the Court for between now and October 4.

20                  I wish you well in between now and then.

21                  So hearing nothing further, we're adjourned. Thank  
22 you.

23                  (Adjourned)